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VIRGINIA LAW REGISTER.

EDITED BY W. M. LILE.

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As a frontispiece, we present our readers with a half-tone portrait of the judges of the Virginia Court of Appeals. This cut is some improvement upon the wretched one printed in the April number, and, though unsatisfactory, is the best that could be made from the photograph.

IN *Ex Parte Ortiz*, 100 Fed. 955, Lochren, J., indulges in an elaborate discussion as to whether "the Constitution follows the flag," and whether therefore a citizen of the late Spanish Colony of Porto Rico, since the cession of that island to the United States, is entitled to his constitutional right of trial by jury in a criminal case. The court expends much learning in considering the novel and important question, and solemnly decides that wherever the flag is planted there the Constitution, *ex proprio vigore*, prevails.

One is disappointed, however, to discover from the last sentence of the opinion that the discussion was uncalled for, the question being not involved in the case. The court justifies the *dictum* on the ground that the point had been urged "with such confidence and amplitude of argument as the basis on which the decision of the case must rest, that acquiescence might be inferred from silence." The action of the court suggests that it had an ambition to be the first to give judicial sanction to the principle that the Constitution follows the flag. We quite agree with the principle, but judges best exemplify their duty when they decide only the actual case before them.

THE Virginia State Bar Association will meet at the seashore in July—probably at Old Point. The precise day is yet to be announced. Prof. Charles Noble Gregory, Assistant Dean of the Law School of Wisconsin University, will deliver the annual address. The following papers will be read: "*The Trial and Trials of Jefferson Davis*," by

Capt. Charles M. Blackford, of the Lynchburg bar; "*The Lawyer of the Future*," by R. Tate Irvine, of Big Stone Gap; and "*Taxation*," by J. Allen Watts, of Roanoke.

It is also expected that the committee appointed two years ago to report on the "Torrens System" of land transfer and registration, will be ready to report at this meeting. This is an important subject, and it is to be hoped that definite action can be taken upon it at the forthcoming meeting. In view of the proposed Constitutional revision in Virginia, it is especially desirable that the profession of the State should be fully advised as to the wisdom or unwisdom of adopting the system in this State.

The friends of Judge W. J. Leake sincerely regret his enforced retirement from the presidency of the Association by reason of ill health. Judge Leake has been an enthusiastic worker in the Association since its organization, and by common consent had well earned the honor which he is thus compelled prematurely to lay aside.

The selection of Maj. William A. Anderson, to succeed Judge Leake as president of the Association, was most appropriate. We have learned unofficially that the subject of the president's address at the approaching meeting will be the timely one of "*Constitutions and their Makers*."

It is to the credit of the Virginia State Bar Association that its members need no appeals to their loyalty to induce them to attend its meetings. Its annual gatherings, whether at the seashore or in the mountains, attract a larger comparative attendance than probably those of any State bar association in the country. One circumstance notably contributing to the success of the Association is, to our mind, the absence of cliques and autocratic cabinets. The Association is dominated and its policy directed by no one man nor by a select few. Every member feels that he is a part of it, with equal voice in shaping its policy and working out its ends. We have more than once in these pages referred to the good fellowship that prevails at these meetings, and to the social, intellectual and physical pleasures that accompany them, and we take occasion to again remind those members who have not formed the habit of attending, that, without knowing it, they are cheating themselves of more than half the value of their membership.

JUDGING from the letters from "the people" now numerous in the lay press of the State, one would be led to suppose that that insatiable, omniscient and always-to-be-appeased thing "the people" has made

up its mind to frame the proposed new Constitution for Virginia, strictly according to its own ideas, without the aid of non-political lawyers, and that the latter need not apply for admission to seats in the convention.

Probably few lawyers in the State, sufficiently versed in the subject of constitutional law to render their services valuable in such a convention, will voluntarily seek for places therein. The small *per diem* from the State will scarcely justify such lawyers in absenting themselves from their offices, in order to attend what will probably be a tedious, prolonged and laborous session. If such lawyers shall consent to serve as delegates, in most cases the incentive will be their interest in the welfare of the State and the urgent will of their constituents.

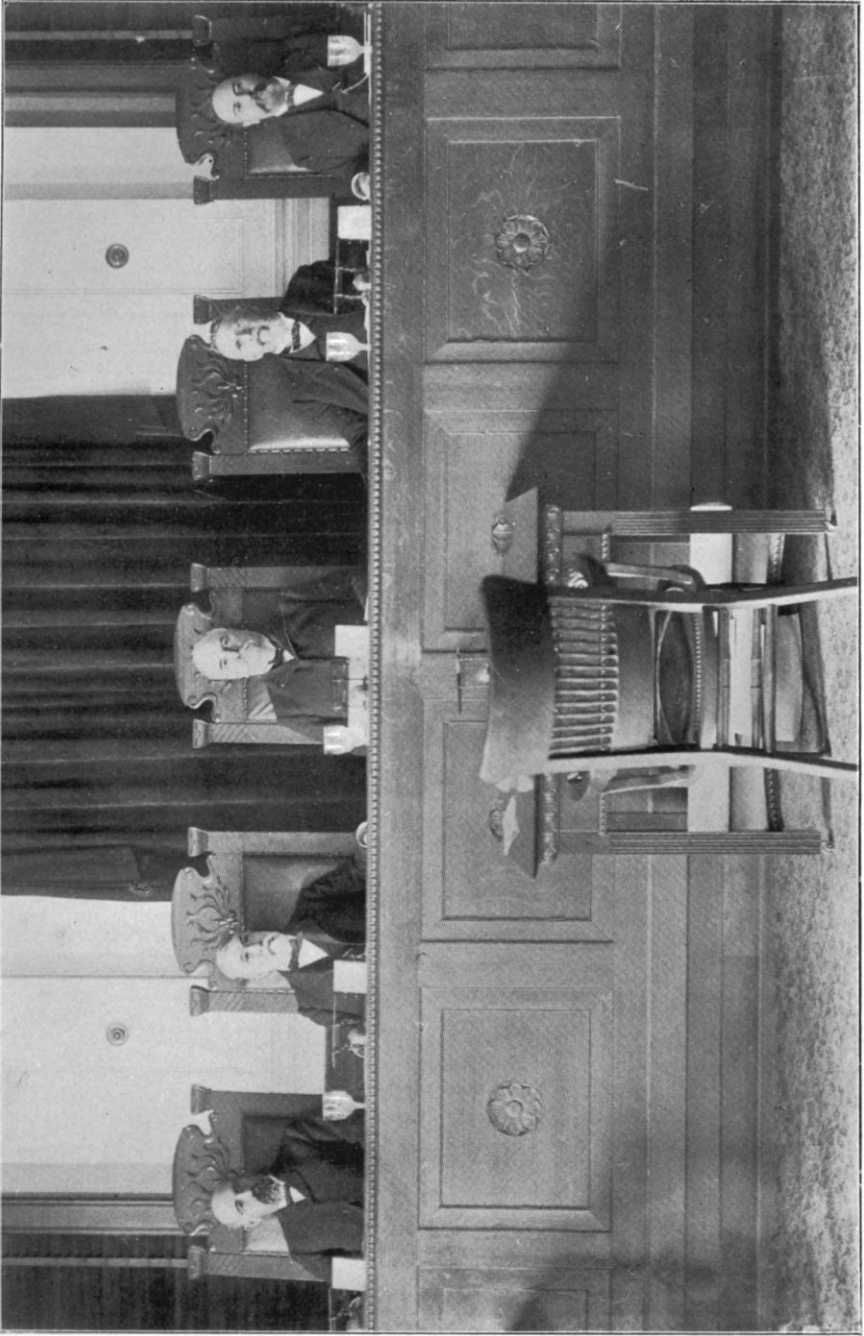
But the apparent disposition to overlook the need of sound lawyers in the convention, and to select non-professional men from the ranks of the people, is based on a false notion as to what elements are needed in the making of a constitution. No more delicate and difficult task, and none requiring a more skilful and technical touch, can be conceived than that of remodelling the fundamental law of a State.

A farmer who wants his horse shod employs a horse-shoer, and not a carpenter to do the job. It is inconceivable that the people of a county should vote for the construction of a steel bridge over some dangerous stream, and couple with their vote the condition that its erection should not be let to a bridge-builder. A constitution framed by merchants, doctors, farmers and professional politicians, would bear much resemblance to this steel bridge when built by a tinker—and would be about as useful, and about as dangerous, as a battle ship constructed by a mender of umbrellas.

By all means let the farmers and the mechanics and the non-legal fraternity generally be represented in the convention, and liberally represented, but it must not be forgotten that the real work of the body must be done by sound constitutional lawyers. These have not only the technical knowledge necessary for such work, but knowledge of those fundamental rights and liberties that especially need to be guarded. The study of the law from the beginning to the end is but a study of the rights of the individual and remedies for their protection and enforcement.

If the new constitution is to be the product of laymen and politicians, howsoever honest or patriotic, then let us rather bear the ills we have.

The earnest attention of the profession of the State is invited to this subject, in the hope that the influence of the bar throughout the State may be exerted in furthering the selection of the best possible material for the composition of the convention, and towards inducing the best legal talent to accept nomination for membership in this intensely important, and, it is to be hoped, serious, learned, dignified and patriotic body.



SUPREME COURT OF APPEALS OF VIRGINIA.